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9 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 JASON LEE SUTTON,

11 Plaintiff,

12 v.

13 PIERCE COUNTY SHERIFF PAUL
14 PASTOR, CHAPLAIN RICHARD
15 ODEGARD, AND RABBI GARY
FRIEDMAN,

16 Defendants.
17

Case No. C07-5327RBL/JKA

REPORT AND
RECOMMENDATION

NOTED FOR:
October 31, 2008

18 This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge
19 pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and
20 MJR 4. Before the court are defendant Odegard's motion for summary judgment, (Dkt. # 45), and plaintiff's
21 motions to dismiss defendant Friedman, and the entire action, with prejudice and without costs, (Dkt # 50 and
22 52). Defendant Odegard has filed a response to the motion to dismiss indicating no objection to dismissal with
23 prejudice and without costs (Dkt # 51).

24 Plaintiff attempts to dismiss the action pursuant to Fed. R. Civ. P. 41 (a)(1), (Dkt. # 52). Federal Rule
25 of Civil Procedure 41 (a) (1) allows a plaintiff to dismiss an action, without order of the court, prior to the filing
26 of an answer or motion for summary judgment. Here, both an answer and a motion for summary judgement
27 have been filed (Dkt. # 32 and 45). The court must consider plaintiff's motion to dismiss the action pursuant to
28 Fed. R. Civ. P. 41 (a)(2).

1 Fed. R. Civ. P. 41 (a)(2) allows for dismissal on the plaintiff's request, upon such terms as the court
2 deems proper. Here, the parties agree to dismissal with prejudice and without costs (Dkt. # 51 and 52). The
3 terms are proper and the action should be **DISMISSED WITH PREJUDICE AND WITHOUT COSTS.**

4 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the
5 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ.
6 P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v.
7 Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to
8 set the matter for consideration on **October 31, 2008**, as noted in the caption.

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10 DATED this 2 day of October, 2008.

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13 /S/ J. Kelley Arnold
14 J. Kelley Arnold
United States Magistrate Judge
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